

Defendant filed its answer last September and has been actively litigating this case since then. Defendant opposes dismissal without prejudice. Defendant contends that during discovery it learned Plaintiffs made intentional misrepresentations in connection with their claim, hence its motion for leave to file a counterclaim for a declaratory judgment.

Rule 41(a) provides that once a defendant has filed an answer, the plaintiff may dismiss only if (1) the defendant stipulates to dismissal, or (2) the court orders dismissal on terms that it considers proper. Given that Plaintiffs have failed to present a proper justification for dismissal and that dismissal will work some prejudice on Defendant who has spent nine months litigating this case in this forum, the Court holds that dismissal without prejudice is not appropriate. *See Thatcher v. Havover Ins. Grp., Inc.*, 659 F.3d 1212, 1213-14 (8th Cir. 2011).

**IT IS SO ORDERED.**

Date: July 28, 2014

/s/ Greg Kays  
GREG KAYS, CHIEF JUDGE  
UNITED STATES DISTRICT COURT